**THE HON'BLE MR JUSTICE V.V.S.RAO**

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WRIT PETITION No.7064 of 2002

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**17.2.2006**

Between:

Mundlapudi Bhushanam, S/o. (late) Yesobu

... Petitioner

AND

The Mandal Revenue Officer, Gannavaram,

Krishna District

And another

...Respondents

**THE HON'BLE MR JUSTICE V.V.S.RAO**

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WRIT PETITION No.7064 of 2002

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the first respondent, namely the Mandal Revenue Officer (MRO), Gannavaram Village in Krishna District in interfering with the petitioner's peaceful possession and enjoyment of the land admeasuring Acs.2.40 in R.S.No.43 (survey No.43-C) of Jakkulanekkalam village of Gannavaram Mandal in Krishna District without granting any assignment patta in favour of the petitioner is illegal and arbitrary. The petitioner also seeks a consequential direction for assignment of patta.

Though interlocutory matters are listed before this Court today, the matter was heard finally and is being disposed of by this order.

It is the case of the petitioner that the land in survey No.43-C was assigned about 55 years ago in favour of the petitioner's father and one Yesuratnam, who are alleged in possession and enjoyment of the land. Both of them applied for a ryotwari patta in 1957. The District Collector refused to issue patta. Aggrieved by the same, they filed an appeal before the Commissioner of Settlements of Estates and Civil Supplies,

who dismissed the appeal on 09.4.1958, but directed the District Collector to dispose of the case, as per Assignment Rules. Thereafter, the father of the petitioner and Yesuratnam are cultivating the land. In the year 1970, the Tahsildar of Gannavaram initiated action under A.P. Land Encroachment Act, 1905 (the Act, for brevity) and issued an order under Section 6 of the Act for eviction of the petitioner. The petitioner filed appeal before the second respondent. The appeal was allowed on 25.11.1970 and the first respondent was directed to issue assignment patta to the petitioner. In spite of the same, patta was not granted, but MRO is trying to interfere with the possession of the petitioner's property.

The MRO filed a counter affidavit along with W.V.M.P. No.1780 of 2005. It is stated that the land in R.S.No.43 is classified as Murugu Kalava (drainage canal) and therefore, Tahsildar did not take any action for assignment of the land. The first respondent also addressed the Executive Engineer on 09.1.2005 for opinion. The Executive Engineer by letter dated 16.3.2005 gave opinion stating that the land in R.S.Nos.43 and 44 is vagu into which drain water from 30 pipes surrounding Ayacutt is discharged, and therefore, land is required for development of drain channel. He also opined that the patta should not be granted in that survey number for any encroacher. It is also alleged that after 1970, the petitioner and another left the land due to heavy losses but again encroached upon the land from Fasli 1410. They, however, did not file any application before the Tahsildar or MRO for assignment and approached the MRO only on 18.4.2002. It is also further stated that a complaint is received by the MRO to the effect that the petitioner and other villagers are quarrelling with each other, and therefore, the MRO got made a tom-tom in the village directing that nobody should enter the land without the permission of the MRO till the dispute is resolved. The allegation that the petitioner is a landless and poor person is denied. It is further that the drainage canal is needed for neighbouring ryots to drain out waste water from the village and therefore, the land in that survey number cannot be assigned to any encroacher.

The learned Counsel for the petitioner submits that the petitioner belongs to scheduled caste, landless and poor person and therefore, he has right to seek patta in respect of the land, which has been in possession of his father and himself for the last more than 50 years. He further submits that unless and until due process of law is followed, the petitioner cannot be evicted from the land nor the petitioner can be prevented from cultivating the land. It is also his submission that the government has issued pattas for the lands, which are situated on the other side of the drainage canal passing from west to east whereas the land in possession of the petitioner is situated on the southern side. According to the learned Counsel, there cannot be any prohibition for grant of patta to the petitioner.

The learned Assistant Government Pleader for Revenue (Assignment) has brought to the notice of this Court the opinion given by the Executive Engineer and submits that according to Board Standing Order (BSO) 15, a patta cannot be issued in respect of drainage poramboke land.

The opinion given by the Executive Engineer, Special Division, Vijayawada on 16.3.2005 is enclosed to the counter affidavit. The endorsement dated 25.3.2005

issued by the MRO is also annexed to the counter affidavit, which would show that the request of the petitioner and three others for grant of pattas in R.S.Nos.43 and 44 was already rejected on the ground that the land was classified as drainage poramboke and that there is no possibility to issue pattas. These two documents would further show that the claim of number of persons for grant of patta has already been rejected by the MRO only on the ground that the land in R.S.Nos.43 and 44 of Jakkulanekkalam Village is a drainage poramboke land and the same is required for draining out the waste water from 30 pipes. Therefore, this Court does not find any illegality or arbitrariness in rejecting pattas. Secondly, it is not denied that as per BSO 15, the land, which is classified as drainage poramboke or canal poramboke, cannot be assigned unless and until the same is reclassified as assessed waste. No material is placed by the learned Counsel for the petitioner in this regard though it is stated in the reply affidavit that landless and poor persons were assigned pattas in respect of the government land situated on the other side of the canal. The petitioner has not placed any material in support of this allegation. Be that as it is, the petitioner's possession has not been denied by the MRO and indeed the endorsement dated 25.3.2005 issued by the MRO is itself subject to the orders of this Court in this writ petition. Therefore, if the petitioner has to be evicted, necessarily, it should be in accordance with the provisions of the Act. It would also be in the interest of justice to explore the possibility of assigning any suitable alternate land to the petitioner, if he is a landless and poor person, as alleged in the affidavit accompanying the writ petition.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

February 17, 2006.

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